U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

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Mr. Brian Kilcullen
SkyKnight Air Services, Inc.
5115 NW 17th Terrace, #39B
Ft. Lauderdale, FL 33309

Dear Mr. Kilcullen:

This is in response to your letter of October 18, 2010 requesting an interpretation of the phrase "necessary for takeoff or landing" as used in 14 C.F.R. § 135.183(b).

Based on discussions with the FAA's South Florida Flight Standards District Office (FSDO) and the FAA's Miami Air Route Traffic Control Center (ARTCC), we understand the situation to be as follows. You operate single-engine Cessna Caravans in part 135 operations between the Bahamas and Fort Lauderdale, Florida, along the FAA's published DEKAL TWO arrival route. Upon reaching the DEKAL fix, which is approximately 30 miles from the shoreline, you are being instructed by air traffic control (ATC) to descend to 4,000 feet. ATC routinely separates air traffic at the DEKAL fix putting the slower turboprop aircraft at the lower altitude, while allowing jet traffic to continue at a higher altitude.

Section 135.183 establishes in pertinent part that "[n]o person may operate a land aircraft carrying passengers over water unless – (a) It is operated at an altitude that allows it to reach land in the case of engine failure, (b) It is necessary for takeoff or landing; (c) It is a multiengine aircraft [meeting certain requirements]; or (d) It is a helicopter equipped with helicopter floatation devices." Because you are operating single-engine aircraft, when carrying passengers, you may not operate over water unless you operate within power-off gliding distance from land, or when it is necessary for take off or landing.

In your scenario, because your aircraft, upon reaching DEKAL, would be operating at an altitude at which it could not reach land if the engine failed, continued operation at that altitude would be necessary for landing. Although the FAA has not established a specific definition of "necessary for takeoff or landing" in regulation, based upon a review of prior legal interpretations and FAA policy, we conclude that descent to an altitude below power-off glide distance from shore at the DEKAL waypoint is not necessary for landing as contemplated by § 135.183(b).

Section 91.119, which establishes the general minimum safe altitudes for part 91 operations, has a similar exception in the rule allowing operations below the established minimum altitudes when necessary for takeoff or landing. In interpreting § 91.119, relating to minimum safe altitudes over congested areas, the FAA noted longstanding policy on the need for pilots to "'take full advantage of the performance capabilities of his aircraft so as to spend as little time as possible at altitudes below the minimums established for cruising flight. The "where necessary language [of § 91.119] achieves this result simply and directly.'" *See* Legal Interpretation to Frank J. Deighan, from Donald Byrne, Assistant Chief Counsel (Oct. 30, 1997) (citing 19 Fed. Reg. 4602 (July 27, 1954)). This letter stated that, "one must determine whether that portion of the flight is necessary to permit the pilot to transition between the surface and the en route or pattern altitude in connection with a takeoff or landing." *Id.*

Whether a maneuver is necessary for takeoff or landing is by necessity a factual determination. Applying the facts of your situation to the rule, we find that descent to 4,000 feet at the DEKAL fix would not be necessary for landing as contemplated by § 135.183. This finding is based on the fact that the altitude assigned is for traffic separation, and that your aircraft's performance would not require you to be at the assigned altitude at the DEKAL fix, which is approximately 30 miles from the shoreline, for approach into the destination airport.[1]

We understand that you have been following the directions of ATC when operating at the altitudes established for the DEKAL TWO arrival route and that you are justifiably concerned about deviating from ATC instructions. *See* § 91.123 (requiring compliance with ATC clearances and instructions). Although pilots must follow ATC instruction, an ATC clearance "is not authorization for a pilot to deviate from any rule, regulation, or minimum altitude." Aeronautical Information Manual (AIM), Chapter 4-4-1(a).

As discussed above, the DEKAL TWO arrival requires turboprop aircraft to descend to an altitude at a distance from shore at which the single-engine Cessna Caravan would be beyond power-off glide distance from shore. Thus, the aircraft is not capable of flying the DEKAL TWO route in compliance with § 135.183. Accordingly, the operator would be required to select another route or request a different clearance in order to maintain an altitude that keeps the aircraft within power off glide distance from shore. *See* Legal Interpretation to Leslie A. Morris, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Sept. 30, 2008) (accepting and following "ATC clearance for a departure procedure for which the aircraft is unable to meet the necessary requirements in the event of

[1] A 1975 legal interpretation confirmed that § 135.183 would permit a single engine aircraft to be operated over water if necessary for takeoff or landing. The interpretation stated that "an ATC clearance must be adhered to and that we should not ask Air Traffic to provide exceptions, the sole reason to keep an operator from violating a regulation." *See* Legal Interpretation to ASO-250, from R. R. Hagadone, ASO-7 (Apr. 11, 1975). Although this interpretation discusses the regulation at hand, it does not shed light on your particular scenario. Rather, this interpretation discusses single-engine air taxi aircraft that are directed for an approach to land at New Orleans International airport. The aircraft were being directed to a particular altitude to intercept the localizer for approach to a runway, unlike your situation in which your aircraft are being directed to an altitude to preserve traffic separation.

engine failure . . . would place the pilot in noncompliance" with the part 135 regulations); Legal Interpretation to Bridgette Doremire, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Jan. 14, 2010) (stating that pilot who is not authorized to operate in Class B airspace but receives clearance from ATC to enter that airspace is responsible for obtaining an amended clearance); AIM, Chapter 4-4-1(b) (stating the pilot's responsibility for the flight and to request amended clearances from ATC if necessary).

This response was prepared by Dean E. Griffith, Attorney in the Regulations Division of the Office of the Chief Counsel. It was coordinated with the Air Transportation Division of Flight Standards Service, the Flight Technologies and Procedures Division of Flight Standards Service, the Terminal Safety and Operations Support Office of the Air Traffic Organization, and the En Route and Oceanic Safety and Operations Support Office of the Air Traffic Organization. A copy of this interpretation will be provided to the South Florida FSDO and the Miami ARTCC. Please contact us at (202) 267-3073 if we can be of additional assistance.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200